

debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

(Approved by the Office of Management and Budget under control number 2502-0371)

SECTION 202 PROJECTS FOR THE NON-ELDERLY HANDICAPPED FAMILIES AND INDIVIDUALS—SECTION 162 ASSISTANCE

§ 891.655 Definitions applicable to 202/162 projects.

The following definitions apply to projects for eligible families receiving project assistance payments under section 202(h) of the Housing Act of 1959 in addition to reservations under section 202 (202/162 projects):

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and subpart E of this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total

tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Assisted unit means a dwelling unit that is eligible for assistance under a project assistance contract (PAC).

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Family (eligible family) means a handicapped family (as defined in § 891.505) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the low-income requirements described in § 813.102 of this chapter, as modified by the definition of “*annual income*” in this section.

Gross rent is defined in part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Operating costs means expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter;

(2) Maintenance expenses, including routine and minor repairs and groundskeeping;

(3) Security expenses;

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families;

(5) Taxes and insurance; and

(6) Allowances for reserves.

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PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 891.715(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a “vacancy payment,” may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent is defined in § 891.505.

Tenant rent means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

§ 891.660 Project standards.

(a) *Property standards.* The property standards for 202/162 projects are provided in § 891.120(a).

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(b) *Minimum group home standards.* The minimum group home standards for 202/162 projects are provided in § 891.310(a).

(c) *Accessibility requirements.* The accessibility requirements for 202/162 projects are provided in §§ 891.120(b) and 891.310(b).

(d) *Smoke detectors.* The requirements for smoke detectors for 202/162 projects are provided in § 891.120(d).

§ 891.665 Project size limitations.

(a) *Maximum project size.* Projects funded under §§ 891.655 through 891.790 are subject to the following project size limitations:

(1) Group homes may not be designed to serve more than 15 persons on one site;

(2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and

(3) Independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site. For the purposes of this section, *household* has the same meaning as *handicapped family*, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) are counted as separate households. For independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories, units with three or more bedrooms may only be developed to serve handicapped families of one or two parents with children.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may have imposed additional limitations on the number of units or residents that may be proposed under an application for Section 202 loan fund reservation, as published in the annual notice of funding availability or the invitation for Section 202 fund reservation.

(c) *Exemptions.* On a case-by-case basis, HUD may approve independent living complexes that do not comply

with the project size limitations prescribed in paragraphs (a)(2), (a)(3), or (b) of this section. HUD may approve such projects if the Sponsor demonstrates:

(1) The increased number of units is necessary for the economic feasibility of the project;

(2) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(3) A project of the size proposed can be successfully integrated into the community; and

(4) A project of the size proposed is marketable in the community.

§ 891.670 Cost containment and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe, and sanitary housing for low-income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas, and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair, and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.*

(1) The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section. Special spaces and accommodations include multipurpose rooms, game rooms, libraries, lounges, and, in independent living complexes, central kitchens and dining rooms.

(2) Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking

areas; dwelling units and lobbies in independent living complexes; and bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits.

§ 891.675 Prohibited facilities.

The requirements for prohibited facilities for 202/162 projects are provided in § 891.315, except that Section 202/162 projects may not include commercial spaces.

§ 891.680 Site and neighborhood standards.

The general requirements for site and neighborhood standards for 202/162 projects are provided in §§ 891.125 and 891.320. In addition to the requirements in §§ 891.125 and 891.320, the following requirements apply to 202/162 projects:

(a) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(b) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects

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may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 891.665(a).

§ 891.685 Prohibited relationships.

The requirements for prohibited relationships for 202/162 projects are provided in § 891.130.

§ 891.690 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, other Federal requirements for the 202/162 projects are provided in §§ 891.155 and 891.325.

§ 891.695 Operating cost standards.

The requirements for the operating cost standards are provided in § 891.150.

§ 891.700 Prepayment of loans.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.705 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution,

but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 891.790. HUD makes the project assistance payments monthly upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which HUD makes semiannually upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* If applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 891.710 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 891.715 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be

committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 891.720 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower:

(1) Is conducting marketing in accordance with § 891.740(a);

(2) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) Has not rejected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of part 813 of

this chapter, as modified by § 891.505. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if:

(1) The Borrower has made reasonable efforts to lease to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under this paragraph will be of

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limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.

§ 891.725 PAC administration.

HUD is responsible for the administration of the PAC.

§ 891.730 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD, including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, as appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the Section 202 loan are included in the regulatory agreement and other loan documents.

§ 891.735 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

§ 891.740 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of tem-

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porary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex, or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The responsibilities of the Borrower with regard to management and maintenance are provided in § 891.600(b).

(c) *Contracting for services.* The responsibilities of the Borrower with regard to contracting for services are provided in § 891.600(c).

(d) *Submission of financial and operating statements.* The responsibilities of the Borrower with regard to the submission of financial and operating statements are provided in § 891.600(d).

(e) *Use of project funds.* The responsibilities of the Borrower with regard to the use of project funds are provided in § 891.600(e).

(f) *Reports.* The responsibilities of the Borrower with regard to reports are provided in § 891.600(f).

§ 891.745 Replacement reserve.

The general requirements for the replacement reserve are provided in § 891.605. For projects funded under §§ 891.655 through 891.790, the amount of the deposits for the initial year of operation shall be an amount equal to 0.6 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings,

garages, and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in part 888 of this chapter.

§ 891.750 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family (as defined in § 891.505); meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; and be a low-income family, as defined in § 813.102 of this chapter (as modified by § 891.505). Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 891.720.

(1) *Local residency requirements are prohibited.* Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency

preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted within the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by the member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the

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Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by § 891.505, and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards. At the time of the annual reexamination of family income and composition, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) *Interim reexamination.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of part 813 of this chapter (as modified in § 891.505) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

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(ii) A family's eligibility for project assistance payment may also be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B.

(Approved by the Office of Management and Budget under control number 2502-0204 and 2505-0267)

§ 891.755 Obligations of the family.

The obligations of the family are provided in § 891.415.

§ 891.760 Overcrowded and underoccupied units.

The requirements for overcrowded and underoccupied units are provided in § 891.620.

§ 891.765 Lease requirements.

The lease requirements are provided in § 891.425.

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

[66 FR 28798, May 24, 2001]

§ 891.775 Security deposits.

The general requirements for security deposits on assisted units are provided in § 891.435. For purposes of subpart E of this part, the additional requirements in § 891.635 apply.

§ 891.780 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by

HUD), with adjustments for vacancies, the project's nonrental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 891.785 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 891.780(a), the requirements for the adjustment of utility allowances provided in § 891.440 apply.

§ 891.790 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

- (1) Complied with § 891.740;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and
- (3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

- (1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons

for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 891.740(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 891.770.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of 12 months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

- (1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;
- (2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
- (3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home); and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.